

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Salaad F. Mahamed,

Plaintiff,

v.

**AMENDED MEMORANDUM
OPINION AND ORDER**
Civil No. 07-4815 ADM/FLN

Sheriff Bruce M. Anderson, Sergeant
Tom Zerwas, and Sergeant Steve
Pedersen,

Defendants.

Salaad F. Mahamed, pro se.

Daniel P. Kurtz, Esq., Everett Law, LLC, Buffalo, MN, appeared for and on behalf of the
Defendants.

On November 21, 2008, the undersigned United States District Judge heard oral
argument on Defendants Bruce Anderson, Tom Zerwas, and Steve Pedersen's Motion for
Summary Judgment [Docket No. 32].

This action was filed on December 12, 2007 by Plaintiff Salaad Mahamed ("Mahamed")
pursuant to 42 U.S.C. § 1983 alleging that Defendants violated his civil rights while he was a
pre-trial detainee at the Sherburne County Jail. Mahamed also moved for the Court to appoint an
attorney for him. Motion to Appoint Counsel [Docket No. 5]. On February 14, 2008, Magistrate
Judge Franklin L. Noel denied the motion finding that the case was not so factually or legally
complex to require the appointment of counsel. February 14, 2008 Order [Docket No. 10] at 2.
A scheduling order was then issued requiring discovery to be completed and non-dispositive
motions to be filed by September 1, 2008 and requiring all dispositive motions by October 1,

2008. Pretrial Scheduling Order [Docket No. 11]. From February 22 until at least March 25, all attempts by the Court to mail copies of these orders to Mahamed were returned as undeliverable. [Docket Nos. 12-15]. In May, Mahamed attended a hearing before Judge Noel, updated his address with the Court, and Judge Noel recommended that Mahamed contact the Volunteer Lawyers Network (“VLN”) to see if a lawyer would be willing to represent him. See Letter to Mr. Mahamed [Docket No. 22]. There was no record with the Court that Mahamed contacted the VLN.

On October 7, 2008, Defendants submitted their Motion for Summary Judgment. Mahamed did not respond to this motion. He did, however, attend the oral argument for that motion on November 21, 2008. At the hearing, Mahamed explained that the reason he had not responded to the motion was that his wife had died, and he had to leave the city to take care of their children. He also claimed that he had contacted the VLN, but the attorney he was referred to did not pursue his action. The Court granted Mahamed an extension of one month, until December 22, to file a response to Defendants’ motion. The Court also recommended that Mahamed contact the VLN about representation.

On December 12, 2008, the Court received a letter from Stephen L. Smith, stating that Mahamed had recently retained his firm to represent him. Smith Letter [Docket No. 41]. In the letter, Mahamed requests that the Court allow him to voluntarily dismiss the Complaint without prejudice. Id. In the alternative, he requests permission to file a motion to amend the Complaint and conduct additional discovery. Barring those requests, he asks for an extension to January 5, 2009 to file his response to Defendants’ summary judgment motion. In a letter written in response to the December 12 communication to the Court, Defendants object to any further

extension to prolong this litigation. Kurtz Letter [Docket No. 42].

On December 22, 2008, the Court issued an Memorandum Opinion and Order [Docket No. 43] granting summary judgment for Defendants. In the Order, the Court found that Mahamed had not obtained counsel in a timely manner despite having multiple opportunities to do so. Because December 22, 2008 was a firm deadline, and it appeared that Mahamed would not submit any filings opposing Defendants' motion, judgment was entered.

After the close of business on December 22, 2008 and shortly before midnight, attorney Stephen Smith attempted to electronically file a response for Mahamed, but was unable to do so. He then sent an e-mail to Chamber's inbox in which he stated, "Judge Montgomery: I attempted to file this electronically, but could not because the case has been closed." E-mail from Stephen L. Smith (December 23, 2008, 12:03:00 A.M.). Attached to the e-mail was a copy of Mahamed's Memorandum of Law Opposing Summary Judgment. He subsequently sent another e-mail at 12:17 a.m. attaching the Affidavit of Stephen L. Smith and Declaration of Salaad Mahamed. E-mail from Stephen L. Smith (December 23, 2008, 12:17:00 A.M.). Because the Court gave Mahamed until December 22, 2008 to respond to Defendants' motion, and because it appears that barring a problem with the closing of the case file that response would have met the deadline, the Court withdraws its Memorandum Opinion and Order of December 22, 2008. The Court will file the documents submitted via e-mail by Mr. Smith on CM/ECF and Defendants will have until January 5, 2009 to respond. The Court will then take the motion under advisement.

Based upon the foregoing, and all of the files, records and proceedings herein, **IT IS HEREBY ORDERED** that

1. The Memorandum Opinion and Order of December 22, 2008 [Docket No. 43] is **AMENDED**.
2. Summary Judgment is **WITHDRAWN**; and
3. Defendants have until January 5, 2009 to respond to Plaintiff's Memorandum.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: December 23, 2008.